

Union Calendar No. 239

105TH CONGRESS
2D SESSION

H. R. 2460

[Report No. 105–418]

To amend title 18, United States Code, with respect to scanning receivers and similar devices.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 11, 1997

Mr. SAM JOHNSON of Texas (for himself, Mr. MCCOLLUM, Mr. SCHUMER, Mr. NORWOOD, and Mr. SMITH of Texas) introduced the following bill; which was referred to the Committee on the Judiciary

FEBRUARY 24, 1998

Additional sponsors: Mr. GEKAS, Mr. WYNN, Mr. HUTCHINSON, Mr. MEEHAN, and Mr. SESSIONS

FEBRUARY 24, 1998

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on September 11, 1997]

A BILL

To amend title 18, United States Code, with respect to scanning receivers and similar devices.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Wireless Telephone Pro-*
 3 *tection Act”.*

4 **SEC. 2. FRAUD AND RELATED ACTIVITY IN CONNECTION**
 5 **WITH COUNTERFEIT ACCESS DEVICES.**

6 (a) *UNLAWFUL ACTS.*—Section 1029(a) of title 18,
 7 *United States Code, is amended—*

8 (1) *by redesignating paragraph (9) as para-*
 9 *graph (10); and*

10 (2) *by striking paragraph (8) and inserting the*
 11 *following:*

12 “(8) *knowingly and with intent to defraud uses,*
 13 *produces, traffics in, has control or custody of, or pos-*
 14 *sesses a scanning receiver;*

15 “(9) *knowingly uses, produces, traffics in, has*
 16 *control or custody of, or possesses hardware or soft-*
 17 *ware, knowing it has been configured for altering or*
 18 *modifying a telecommunications instrument so that*
 19 *such instrument may be used to obtain unauthorized*
 20 *access to telecommunications services; or”.*

21 (b) *PENALTIES.*—

22 (1) *GENERALLY.*—Section 1029(c) of title 18,
 23 *United States Code, is amended to read as follows:*

24 “(c) *PENALTIES.*—*The punishment for an offense*
 25 *under subsection (a) of this section is—*

1 “(1) in the case of an offense that does not occur
2 after a conviction for another offense under this sec-
3 tion—

4 “(A) if the offense is under paragraph (1),
5 (2), (3), (6), (7), or (10) of subsection (a), a fine
6 under this title or imprisonment for not more
7 than 10 years, or both; and

8 “(B) if the offense is under paragraph (4),
9 (5), (8), or (9), of subsection (a), a fine under
10 this title or imprisonment for not more than 15
11 years, or both; and

12 “(2) in the case of an offense that occurs after a
13 conviction for another offense under this section, a
14 fine under this title or imprisonment for not more
15 than 20 years, or both.”.

16 (2) *ATTEMPTS*.—Section 1029(b)(1) of title 18,
17 United States Code, is amended by striking “pun-
18 ished as provided in subsection (c) of this section”
19 and inserting “subject to the same penalties as those
20 prescribed for the offense attempted”.

21 (c) *DEFINITIONS*.—Section 1029(e)(8) of title 18,
22 United States Code, is amended by inserting before the pe-
23 riod “or to intercept an electronic serial number, mobile
24 identification number, or other identifier of any tele-
25 communications service, equipment, or instrument”.

1 (d) *APPLICABILITY OF NEW SECTION 1029(a)(9).—*

2 (1) *IN GENERAL.*—Section 1029 of title 18,
3 United States Code, is amended by adding at the end
4 the following:

5 “(g) *It is not a violation of subsection (a)(9) for an*
6 *officer, employee, or agent of, or a person under contract*
7 *with, a facilities-based carrier, for the purpose of protecting*
8 *the property or legal rights of that carrier, to use, produce,*
9 *have custody or control of, or possess hardware or software*
10 *configured as described in that subsection (a)(9).”.*

11 (2) *DEFINITION.*—Section 1029(e) of title 18,
12 United States Code is amended—

13 (A) *by striking “and” at the end of para-*
14 *graph (6);*

15 (B) *by striking the period at the end of*
16 *paragraph (7) and inserting a semicolon;*

17 (C) *by striking the period at the end of*
18 *paragraph (8) and inserting “; and”; and*

19 (D) *by adding at the end the following:*

20 “(9) *the term ‘facilities-based carrier’ means an*
21 *entity that owns communications transmission facili-*
22 *ties, is responsible for the operation and maintenance*
23 *of those facilities, and holds an operating license*
24 *issued by the Federal Communications Commission*

1 *under the authority of title III of the Communica-*
2 *tions Act of 1934.”.*

3 *(e) AMENDMENT OF FEDERAL SENTENCING GUIDE-*
4 *LINES FOR WIRELESS TELEPHONE CLONING.—*

5 *(1) IN GENERAL.—Pursuant to its authority*
6 *under section 994 of title 28, United States Code, the*
7 *United States Sentencing Commission shall review*
8 *and amend the Federal sentencing guidelines and the*
9 *policy statements of the Commission, if appropriate,*
10 *to provide an appropriate penalty for offenses involv-*
11 *ing the cloning of wireless telephones (including of-*
12 *fenses involving an attempt or conspiracy to clone a*
13 *wireless telephone).*

14 *(2) FACTORS FOR CONSIDERATION.—In carrying*
15 *out this subsection, the Commission shall consider,*
16 *with respect to the offenses described in paragraph*
17 *(1)—*

18 *(A) the range of conduct covered by the of-*
19 *fenses;*

20 *(B) the existing sentences for the offenses;*

21 *(C) the extent to which the value of the loss*
22 *caused by the offenses (as defined in the Federal*
23 *sentencing guidelines) is an adequate measure*
24 *for establishing penalties under the Federal sen-*
25 *tencing guidelines;*

1 (D) the extent to which sentencing enhance-
2 ments within the Federal sentencing guidelines
3 and the court's authority to sentence above the
4 applicable guideline range are adequate to en-
5 sure punishment at or near the maximum pen-
6 alty for the most egregious conduct covered by
7 the offenses;

8 (E) the extent to which the Federal sentenc-
9 ing guideline sentences for the offenses have been
10 constrained by statutory maximum penalties;

11 (F) the extent to which Federal sentencing
12 guidelines for the offenses adequately achieve the
13 purposes of sentencing set forth in section
14 3553(a)(2) of title 18, United States Code;

15 (G) the relationship of Federal sentencing
16 guidelines for the offenses to the Federal sentenc-
17 ing guidelines for other offenses of comparable se-
18 riousness; and

19 (H) any other factor that the Commission
20 considers to be appropriate.

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